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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/620,142
Filing Date: July 15, 2003
Appellant(s): BEAN ET AL.

Richard Bridge
For Appellant

MAILED
AUG 24 2007
GROUP 3700

EXAMINER'S ANSWER

This is in response to the appeal brief filed 5/8/07 appealing from the Office action
mailed 11/22/06.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,536,264	Hsueh et al.	7-1996
5,112,325	Zachry	5-1992

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 20-27, 29-43, 51-65, and 70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hsueh et al. USPN 5536264.

As to claims 20-27, Hsueh describes an absorbent structure 42 comprising an absorbent member 71 at least partially made of fibers (col. 9, lines 53-64) and a reinforcing member 72 for maintaining the structural integrity of the absorbent member (col. 20, lines 7-17). The absorbent member 71 has a first axis extending generally lengthwise of the absorbent member and a second axis perpendicular to the first axis extending generally widthwise of the absorbent member (Figures 26-28). The reinforcing member 72 defines generally parallel and non-orthogonal strands as claimed (Figures 26 and 28). Hsueh does not disclose the reinforcing member is embedded in the absorbent composite, but comprises a separate layer of the absorbent composite. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the reinforcing member imbedded in the absorbent composite since forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. Hsueh further discloses the absorbent member 71 and reinforcing member 72 are attached by a variety of chemical, physical, and adhesive agents (col. 22, lines 46-49). Hsueh additionally discloses the absorbent member 71 and reinforcing member 72 are compacted together to improve the contact and interconnection of the absorbent particles and the adjacent layer (col. 36, lines 7-

16). Thus, the disclosure of compaction to improve interconnection of the layers suggests some degree of fiber entanglement of the layers.

As to claim 29, Hsueh discloses the reinforcing member is stretchable (col.20, lines 42-47 and lines 61-62).

As to claim 30, Hsueh discloses multiple reinforcing members (col. 4, lines 10-15).

As to claim 31, Hsueh discloses an absorbent structure and garment having a topsheet layer 38, a liquid impermeable backsheet 40, and the absorbent structure 42 generally disposed between the topsheet and backsheet (Figure 26).

As to claims 32-35, 38, 43, and 70, see the discussion of claim 20, supra. Hsueh additionally discloses the reinforcing member comprises an elastomeric material (col. 20, lines 42-47). It would have been obvious to one having ordinary skill in the art to form rugosities on the surface of the absorbent member as Hsueh discloses the components are stretched to form voids, which represent broken connections between the fibers and reinforcing member in the machine direction. The elastomeric material combined with the absorbent member, having greater stretch than the absorbent member would characteristically gather the absorbent member and form rugosities on the surface of the absorbent member. The limitation in claim 34, where the reinforcing member is relaxed from a stretched condition in which connection of the reinforcing

member to the absorbent member is made is directed to a process of making the article.

“Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.” In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted). MPEP 2113.

As to claims 36 and 37, Hsueh discloses the basis weight of the absorbent member is less than 1200 grams per square meter and less than 1600 grams per square meter (col. 24, lines 2-10). The basis weight of the layer is constant in a stretched or unstretched state.

As to claims 39-41, see the discussion of claim 20, supra. The examiner interprets the limitation of the strands ‘crossing over’ one another as the strands crossing over the path of another strand. This arrangement is shown in the noncontinuous netting in Figures 26 and 28.

As to claim 42, Hsueh discloses an absorbent structure and garment having a topsheet layer 38, a liquid impermeable backsheet 40, and the absorbent structure 42 generally disposed between the topsheet and backsheet (Figure 26).

As to claims 51-53, 57-59, 61, and 62, see the discussion of claim 20, *supra*. Hsueh additionally discloses the absorbent structure can be manufactured in a wide variety of shapes and sizes including an hourglass shape, which has a non-uniform transverse width (col. 54, lines 43-47 and line 67; Figures 26 and 28). To provide the claimed ratio of widths is within the level of one of ordinary skill in the art where the general condition of the hourglass shape is disclosed by the prior art. The strands intersecting one another at junctions to define openings are shown in the noncontinuous netting in Figures 26 and 28.

As to claim 54, Hsueh discloses the noncontinuous composite is stretched to form voids (col. 40, lines 48-52).

As to claims 55 and 56, Hsueh does not disclose the second narrower portion has an unstretched reinforcing member. However, Hsueh does teach the wider portions have greater stretch and wider void spaces as compared to the narrower portion. It would have been obvious to one having ordinary skill in the art to leave the narrower portion unstretched or substantially unstretched to conform to the shape of the absorbent composite (col. 41, lines 15-46).

As to claim 60, the limitation of the reinforcing member being relaxed from a stretched condition in which connection of the reinforcing member to the absorbent member is made is directed to a process of making the article. "Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted). MPEP 2113.

As to claim 63, Hsueh discloses multiple reinforcing members (col. 4, lines 10-15).

As to claim 64, Hsueh discloses an absorbent structure and garment having a topsheet layer 38, a liquid impermeable backsheet 40, and the absorbent structure 42 generally disposed between the topsheet and backsheet (Figure 26).

As to claim 65, see the discussion of claim 51, *supra*.

(10) Response to Argument

Applicant's arguments filed 5/8/07 have been fully considered but they are not persuasive.

As to claims 20-31, Applicant argues that Hsueh fails to disclose or even suggest fibers of the absorbent member passing through openings in the reinforcing member and being entangled with other fibers of the absorbent member as recited in claim 20. Applicant argues Hsueh et al. teaches chemically bonding the macrostructure layer to the substrate layer and/or compacting or pressing the macrostructure layer and substrate layer together. Applicant argues chemical bonding and compacting do not result in absorbent member fibers passing through the reinforcing member and becoming entangled with other fibers of the absorbent member. Hsueh discloses the absorbent member 71 and reinforcing member 72 are compacted together to improve the contact and interconnection of the absorbent particles and the adjacent layer (col. 36, lines 7-16). Thus, the disclosure of compaction to improve interconnection of the layers suggests some degree of fiber entanglement of the layers. Additionally it is known in the art that mechanical bonding occurs from compression or compaction of webs. For example, Zachry USPN 5112325 teaches mechanical entanglement as a result of compression of webs (col. 4, lines 4-14). This mechanical entanglement satisfies the limitation of fibers passing through the reinforcing member and becoming entangled with other fibers of the absorbent member.

As to claims 32-38, 41-43, and 70, Applicant argues the Examiner is relying on the disclosure of Hseuh, which teaches the substrate layer 72a may be made from elastomers and there is no teaching that once the absorbent layer 71a is bonded to the substrate layer 72a to form the composite that the entire composite is stretchable. The claim does not require the entire composite is stretchable. Claim 33, in particular requires the reinforcing member is elastically stretchable. A layer comprising elastomers is characteristically stretchable. Applicant argues Hsueh does not teach stretching of the reinforcement member and lacks any disclosure that the absorbent composite 70 is gathered by a reinforcing member to form rugosities on the surface of the absorbent layer. However, Hsueh discloses the components are stretched to form voids (col. 40, lines 48-52). Additionally Hsueh teaches a stretchable substrate layer (col. 20, lines 59-64). The elastomeric material combined with the absorbent member, and having greater stretch than the absorbent member would characteristically gather the absorbent member and form rugosities on the surface of the absorbent member.

As to claims 39 and 40, the examiner interprets the limitation of the strands 'crossing over' one another as the strands crossing over the path of another strand. This arrangement is shown in the noncontinuous netting in Figures 26 and 28.

As to claims 51-57, 59, and 61-65, the rejection is maintained for same reasons as argued for claim 20 above.

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As to claim 58, Applicant argues Hsueh et al. does not teach or suggest that the substrate layer can be formed from strands that intersect one another at the junctions. The strands intersecting one another at junctions to define openings are shown in the noncontinuous netting in Figures 26 and 28.

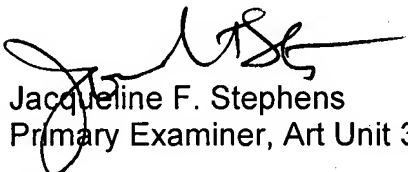
As to claim 60, Hsueh discloses a stretchable reinforcing member attached to an absorbent member. While, Hsueh does not disclose the reinforcing member is relaxed from a stretched condition when attached, the limitation is directed to a process of making the article and does not patentably distinguish the claimed structure over the prior art structure.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


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Art Unit: 3761

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